

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JUAN HERRERA,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 10-3154-CV-S-RED-H
MARTY C. ANDERSON, Warden,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed written exceptions to the report and recommendation of the Magistrate in which he continues to challenge the disciplinary action taken against him.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed because petitioner's claims are without merit. The record clearly indicates that there was some evidence to support the disciplinary action taken in this case. Regardless of petitioner's assertions that he has established his innocence and that the Magistrate's finding was arbitrary, this Court has carefully reviewed the record, and finds that the Magistrate correctly applied the "some evidence" standard, as enunciated in Hill.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: June 22, 2010